

Hosted Practice Solutions Subscriber Agreement



HOSTED PRACTICE SOLUTIONS SUBSCRIBER AGREEMENT (the "Subscriber Agreement") entered into between the State of Tennessee "Subscriber" as set forth on the West Order Form/Order Notification ("Order Form") or Hosted Practice Solutions Subscription Charges Exhibit ("Exhibit") and West Publishing Corporation, a Thomson Reuters business ("West") regarding West Hosted Practice Solutions products, as follows:

1. Designation of Products. The terms and conditions of this Subscriber Agreement are applicable to West's Hosted Practice Solutions products. Subscriber is licensing the West Hosted Practice Solutions product(s) specified by submitting a then-current Order Form or Exhibit accompanied with a State of Tennessee purchase order.

2. License.

2.1. Grant. West grants Subscriber a non-exclusive, non-transferable, limited license to use at its licensed site(s) identified in the Order Form, or Exhibit, the Hosted Practice Solutions products listed in the Order Form or Exhibit hereto ("Software") in Subscriber's normal course of business. In addition, Subscriber's personnel who work at or are assigned to the licensed site may use the Software on personal computers or laptops located off-site. The Software is protected by copyright and various U.S. and international patent applications.

2.2. Other Restrictions. Subscriber may not publish, transmit, retransmit, disseminate, broadcast, circulate, sell, resell, loan, lease, distribute or transfer the Software or copies to third parties, nor reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of the Software. Subscriber may not reproduce all or any portion of the Software (except as expressly permitted in this Subscriber Agreement) or any accompanying user documentation ("Documentation"), or modify, translate or otherwise create derivative works of the Software. Subscriber agrees to notify its employees and agents who may have access to Software of the restrictions contained in this Subscriber Agreement and to ensure their compliance with these restrictions. Notwithstanding anything above to the contrary the State is subject to and must comply with the Tennessee Public Records Act found at Tenn. Code Ann. Title 10 Chapter 7 Part 5.

3. Subscriber Content. Subscriber grants West a worldwide right to use, host, store, service, reproduce, modify, create derivative works, communicate, and publish all content uploaded to the Software by Subscriber only as is necessary for West to perform its duties under this Agreement (as defined below). West agrees that all Subscriber uploaded content and documents ("Subscriber Content") is provided to West by Subscriber solely to enable West to provide services, including accessing and viewing Subscriber Content as directed by Subscriber or Subscriber's users (using Subscriber's passwords as needed) in order to provide research assistance and/or technical support, to Subscriber and that Subscriber Content will only be used for that purpose and will only be accessed by those West employees, affiliates and contributors who have a need to access Subscriber Content in order to provide the services. Subscriber shall retain all title and ownership of any intellectual property rights it holds in Subscriber Content. Subscriber is responsible for ensuring that it has all of the necessary rights in any Subscriber Content and that all Subscriber Content does not infringe on the rights of any copyright owners, violate any applicable laws or violate the terms of any license or agreement. Upon receipt of adequate notice under the Digital Millennium Copyright Act (17 U.S.C.A. § 512), West reserves the right to delete or disable any Subscriber Content alleged to infringe on the intellectual property rights of any third party.

4. Other Licenses. The Software may be used to access and use various West products and services, including Westlaw ("West Services"). All access to and use of such West Services by means of the Software, including any charges for such access and use, will be governed by the terms of the applicable West user agreement.

5. Title. Subscriber hereby acknowledges and agrees that all right, title and interest in and to the Software, the Documentation and any other related materials are, and shall remain, vested solely in West and other software owners, if any, and Subscriber shall not hold itself out as having any ownership or other rights with respect thereto, except as specifically granted hereunder. Except as expressly permitted herein, Subscriber covenants and agrees that it shall make no use of the Software, the Documentation or any other related materials without West's prior written consent. Any and all goodwill associated with such rights shall inure directly and exclusively to the benefit of West.

6. Confidential Information.

6.1 West acknowledges that any documents, the contents thereof, or other proprietary or confidential materials expressly designated as confidential that are provided to West by Subscriber during the term of this Subscriber Agreement ("Subscriber Confidential Information") are valuable assets of Subscriber. West will ensure that the Subscriber Confidential Information is not used or disclosed except as expressly permitted by this Subscriber Agreement. West will not permit any unaffiliated third party access to, in any manner, the Subscriber Confidential Information, except as provided in this Subscriber Agreement. Subscriber Confidential Information shall not include information that consists of ideas, concepts, know-how or techniques relating to the enhancement, customization, installation or implementation of the Software.

6.2 Subscriber acknowledges and agrees that the Software constitutes a valuable proprietary product of West and that the Software, together with the terms of this Subscriber Agreement, shall be referred to as the "West Confidential Information." Subscriber will take reasonable steps to ensure that the West Confidential Information is not used or disclosed except as expressly permitted by this Subscriber Agreement. Subscriber will not permit any third party access to, in any manner, the West Confidential Information, except as provided in this Subscriber Agreement. Subscriber may permit its independent contractors access to the West Confidential Information to the extent necessary for such contractor's provision of services to Subscriber if such contractor executes a confidentiality agreement with Subscriber or West which prohibits the contractor from using or disclosing the West Confidential Information; provided, however, that such independent contractors may not include any Competitor. A "Competitor" shall mean a third party that is regularly engaged in the business of developing or marketing software that performs the same or similar functions as one or more of the modules of the West software implemented by Subscriber.

6.3 Each party represents to the other party that its personnel have undertaken general obligations of nondisclosure with regard to proprietary and Confidential Information to which they have access during the course of their relationship with such party that are no less restrictive than those imposed hereunder.

6.4 Both parties agree to use reasonable efforts to provide the other party with notice, if a party becomes legally compelled to disclose the Confidential Information and Personal Information of the other party. For purposes of this Subscriber Agreement, "Personal Information" shall refer to, without limitation, the following types of information: name, address, e-mail address, age, date of birth, telephone number, fax, social security number or equivalent or similar government identification numbers, credit/debit card information, bank account information, logins, passwords, or medical or health records of an identifiable human being. If a protective order or remedy is not available in time, the obligation of confidentiality shall be waived to the extent necessary to comply with the law and the receiving party will furnish only that portion of the Confidential Information and personal information which is legally required.

6.5 Notwithstanding anything above to the contrary the State is subject to and must comply with the Tennessee Public Records Act found at Tenn. Code Ann. Title 10 Chapter 7 Part 5.

7. Charges and Modification of Charges. Charges payable for access to Hosted Practice Solutions ("Monthly Charges") will be as stated on the Order Form or Exhibit and the applicable Schedule A or as otherwise agreed upon in writing by the parties. Monthly Charges shall commence on the date West process Subscriber's Order. Monthly Charges may be modified upon at least 30 days prior notice to Subscriber in writing or online or pursuant to the terms stated on an applicable Order form or Exhibit. Hosted Practice Solutions products that are Schedule A rates may be modified upon at least 30 days prior notice to Subscriber in writing or online. Modification of any charges shall not be considered as an amendment to this Subscriber Agreement that permits termination of this Subscriber Agreement pursuant to paragraph 10.1 (i) herein. All charges are exclusive of applicable sales, use, value added tax (VAT) or equivalent, ad valorem, personal property and other taxes, which are the responsibility of Subscriber. Electronic storage fees will be allocated equally across all locations that have subscribed to the Practice Solution products and will be taxed according to this allocation. Subscriber will pay all invoices in full within 45 days from date of invoice. If full payment is not made within 60 days, Subscriber may be charged up to the maximum legal interest allowed under Tennessee law on the unpaid balance. Notwithstanding

anything above to the contrary the State of Tennessee Prompt Pay Act (Tenn. Code §12-4-701 et seq.) will govern in this matter.

8. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.

West warrants that for the period ending ninety (90) days after the first date that Subscriber commences production use of the Software the Software will substantially conform to the Documentation (available at store.westlaw.com.). THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SUBSCRIBER AGREEMENT, ANY APPLICABLE SCHEDULE OR LICENSE AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY AND WEST'S, ITS AFFILIATES AND/OR CONTRIBUTORS' ENTIRE LIABILITY UNDER THIS SUBSCRIBER AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE SOFTWARE WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF CHARGES PAID BY SUBSCRIBER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL WEST AND/OR ITS AFFILIATES BE LIABLE TO SUBSCRIBER FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS UNDER THIS SUBSCRIBER AGREEMENT OR USE OF, OR INABILITY TO USE, THE SOFTWARE, EVEN IF WEST, ITS AFFILIATES OR CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER WEST NOR ITS AFFILIATES OR CONTRIBUTORS MAKE ANY WARRANTY THAT ACCESS TO THE SOFTWARE WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR FREE. SUBSCRIBER ACKNOWLEDGES THAT PROVISION OF THE SOFTWARE ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES, INCLUDING THE INADVERTENT LOSS OF DATA OR DAMAGE TO MEDIA. The performance of the Software varies with various manufacturers' equipment with which it is used. Certain software used by Subscriber may not be capable of supporting the Software. Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent they are finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

9. Term and Termination.

9.1 This Subscriber Agreement and each Order Form or Exhibit may not be terminated prior to a Minimum Term of one year after the date West processes this Subscriber Agreement and that Order Form or Exhibit. In the event Subscriber requests a Minimum Term in excess of one year as set forth in the Order Form or Exhibit, this Subscriber Agreement may not be terminated prior to the expiration of such Minimum Term. Upon expiration of the Minimum Term or any Renewal Term set forth in the Order Form or Exhibit, either party may terminate this Subscriber Agreement by providing the other party 30 days prior written notice of such termination at the end of any Renewal Term. Notwithstanding the foregoing, (i) Subscriber may terminate this Subscriber Agreement immediately by giving written notice of termination after receiving notice of any amendment (as permitted under paragraph 11.1), which contains new terms that materially alter the terms of this Subscriber Agreement and are unacceptable to Subscriber; (ii) West may terminate this Subscriber Agreement immediately upon giving written notice of termination to Subscriber if Subscriber commits a material breach of any obligation to West under any other agreement between the parties; (iii) West may terminate this Subscriber Agreement immediately upon giving written notice of termination to Subscriber if West reasonably believes that Subscriber's use of the Software violates any applicable law or regulation, this Subscriber Agreement or may result in a risk to public safety, including but not limited to the safety of private individuals; and (iv) either party may terminate this Subscriber Agreement immediately upon giving written notice of termination to the other party if the other party commits a material breach of this Subscriber Agreement. Upon any termination of this Subscriber Agreement, the West Software licenses shall terminate.

9.2 If this Subscriber Agreement terminates, West will provide Subscriber with access to, and the ability to export Subscriber Content for 180 days at no charge. After a commercially reasonable time has passed, but no less than 180 days after the termination of this Subscriber Agreement, West will delete Subscriber Content. The terms and conditions of this Subscriber Agreement will remain in effect during such 180 days and cover any access to the Software by Subscriber to export Subscriber Content. Notwithstanding anything above to the contrary, the parties agree that the State's Special Term

and Condition #18 "Contract Cancellation" will govern in case of a conflict with this term.

10. General Provisions.

10.1 Effect of Agreement. This Subscriber Agreement (which includes State's Contract# 44073 and all applicable Order Forms, Exhibits, any current and future Schedules, license agreements and the like) (collectively, the "Agreement") embodies the entire understanding between the parties with respect to the subject matter of this Subscriber Agreement and supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter. Furthermore, this Subscriber Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Software. Except as otherwise provided in this Subscriber Agreement, West may amend the terms and conditions of this Subscriber Agreement by giving Subscriber at least thirty (30) days prior written notice. Any other amendment must be in writing and signed by both parties. West, as used herein, applies to West Publishing Corporation, Thomson Reuters Applications Inc., West Services, Inc., Thomson Reuters (Legal) Inc., Westlaw Business Services, and their affiliates. Notwithstanding anything above to the contrary the parties agree that the State's Special Term and Condition #18 "Contract Cancellation" will govern in case of a conflict with this term.

10.2 Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, wars, epidemics or any other similar cause.

10.3 Notices. Except as otherwise provided herein, all notices must be in writing to:

West

610 Opperman Drive
P.O. Box 64833
St. Paul, Minnesota 55164-1803
Attention: Customer Service.

State of Tennessee

Central Procurement Office
Attn: Category Team Lead
312 Rosa L. Parks Avenue
Tennessee Tower, 3rd Floor
Nashville, TN 37243

10.4 Governing Law and Assignment. This Subscriber Agreement will be governed by and construed under the law of the state of Tennessee, U.S.A. without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Tennessee will have exclusive jurisdiction over any claim arising out of this Subscriber Agreement and each party consents to the exclusive jurisdiction of such courts. Neither this Subscriber Agreement nor any part or portion may be assigned, sublicensed or otherwise transferred by Subscriber without West's prior written consent. Should any provision of this Subscriber Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected thereby. Failure of any party to enforce any provision of this Subscriber Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this Subscriber Agreement are inserted for convenience only and do not constitute a part of the Agreement. West, as used herein, applies to West Services Inc.

10.5 Export Laws. The Software and its related Documentation may not be exported or reexported in violation of the U.S. Foreign Corrupt Practices Act and its implementing regulations, the U.S. Export Administration Act and its implementing regulations or any other applicable laws, rules and regulations. Subscriber shall bear all expenses relating to any necessary licenses and/or exemptions with respect to the export from the United States of the Software to any location so as to be in compliance with all applicable laws, rules and regulations.

10.6 U.S. Government Restricted Rights. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Product clause in DFARS 252.227-7013, or in subdivision (c)(1) and (c)(2) of the Commercial Computer Product - Restricted Rights clause at 48 CFR 52.227-19, as applicable, and in similar clauses in the NASA FAR Supplement.

10.7 Feedback. Any and all Feedback that Subscriber provides to West shall become the exclusive property of West without any payment, accounting, remuneration, or attribution to Subscriber. "Feedback" means information provided, in any manner, by or on behalf of Subscriber with respect to any feature, West product or service, or their enhancement, customization, configuration, installation, or implementation, including but not limited to ideas, concepts, suggestions, materials, functions, methods, processes, and rules.

11. Maintenance and Support.

11.1 Service Level Agreement Attachment A sets forth the details regarding the maintenance and support services offered for West's Hosted Practice Solutions.

12. External Users

12.1 Access of Subscriber Content by Third Parties. Subscriber may allow third parties access to Subscriber's Content stored within the Software. Prior to being granted access to Subscriber's Content the third party must be invited by Subscriber to view Subscriber Content and must then

assent to the terms and conditions covering usage of the Software through another agreement contained within the Software prior to accessing Subscriber's Content. If a third party invited by Subscriber to access Subscriber Content does not assent to the terms and conditions contained within the additional agreement the invited third party will be denied access to Subscriber's Content.